



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Lee B. Smith & Associates

File: B-265736

Date: September 6, 1995

DECISION

Lee B. Smith & Associates protests the award of a contract by the Department of Agriculture, Forest Service under invitation for bids (IFB) No. R4-95-12, which sought bids for appraisal services.

We dismiss the protest as untimely.

Smith & Associates was an incumbent appraisal services contractor for the Forest Service whose contract was due to expire on June 15, 1995. Well prior to that date the Forest Service sent a pre-solicitation notice requesting that prospective bidders indicate whether they wanted to receive a bid package. According to the agency, the pre-solicitation notice returned by Smith & Associates indicated that it did not want to receive a copy of the IFB and it was therefore not solicited for the instant solicitation.

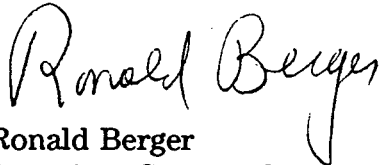
Bid opening occurred on May 19. After realizing that the solicitation for its current services had been issued, on June 12 Smith & Associates requested that the agency accept a bid from it. The agency denied Smith & Associates's request on July 5 stating that 35 offers were received and acceptance of the bid would be unfair to the other bidders. Our office received the instant protest on August 14.

Our Bid Protest Regulations contain strict rules requiring timely submission of protests. Under these rules, protests not based upon alleged improprieties in a solicitation must be filed no later than 10 working days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2). Where a protest initially has been filed with a contracting activity, any subsequent protest to our Office, to be considered timely, must be filed within 10 working days of "actual or constructive knowledge of initial adverse agency action." 4 C.F.R. § 21.2(a)(3). The term "adverse agency action" is defined in our Bid Protest Regulations as any action or inaction on the part of a contracting agency, such as bid opening, receipt of proposals, and the award of a contract, which is prejudicial to the position taken in a protest filed with the agency. 4 C.F.R. § 21.0(f).

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The protest, filed here more than 10 days after Smith & Associates received the agency's July 5, letter, is thus untimely, because either as an initial protest it does not meet the 10-day filing requirement or, if we view Smith & Associates's request that the agency accept its bid as a timely filed agency-level protest, it does not meet the 10-day requirement for protesting after learning of adverse action on the agency level protest.

The protest is dismissed

A handwritten signature in cursive script that reads "Ronald Berger". The signature is written in dark ink and is positioned above the printed name and title.

Ronald Berger
Associate General Counsel